

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

202

CRM-M-34427-2022(O&M)

Date of decision: 31.08.2022

SUKHWINDER SINGH @ SUKHA

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr.DAG Punjab.

VIKAS BAHL. J. (ORAL)

This is the first petition filed under Section 438 of the CrPC for grant of pre-arrest bail to the petitioner in case FIR No.91 dated 09.07.2022 registered under Sections 15 and 27(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Kot Ise Khan District Moga.

This Court vide order dated 05.08.2022 was pleased to file the following order:-

“CRM-27834-2022

This is an application filed for grant of leave under Rule 3/A (1) of Chapter VI, Part B, Volume V of Punjab and Haryana High Court Rules and Orders to file the present petition.

In view of averments made in the application, the same is allowed and leave is granted under the aforesaid Rules and Orders to file the present petition.

Main case

Learned counsel for the petitioner inter alia contends that although, the name of the petitioner was mentioned in the

secret information but neither any recovery of money nor recovery of any intoxicant substances have been effected from him. It is further submitted that alleged recovery of 3 kg and 500 grams of poppy husk has been effected from the house of co-accused Shinder Singh and even the alleged amount has been recovered from his house and there is no material to implicate the petitioner in the present case. It is contended that the petitioner was earlier involved in an FIR on the basis of disclosure statement of co-accused and the petitioner had approached this Court by way of filing a petition bearing No.CRM-M-29754-2022 and was granted interim anticipatory bail on 14.07.2022 and it is in order to oppose the said anticipatory bail that the present petitioner has been roped into the present case. It is further contended that it has been wrongly recorded in the order dated 26.07.2022 rejecting the anticipatory bail application of the present petitioner, passed by the Judge, Special Court, Moga that the petitioner has been declared as proclaimed offender in FIR No.68 whereas, the petitioner had the relief of interim anticipatory bail having been granted in his favour in the said case.

Notice of motion for 31.08.2022.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

05.08.2022

(VIKAS BAHL)
JUDGE “

Learned counsel for the petitioner submits that in pursuance to the said order, the petitioner has joined investigation and since recovery in the present case is of non-commercial quantity, thus, bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 would not apply.

Learned State counsel on the other hand on instructions from ASI Lakhwinder Singh has stated that the petitioner has joined the investigation and is not required for further investigation and an amount of Rs.6,78,600/- has also been recovered from the petitioner, which as per the prosecution is the drug money.

Learned counsel for the petitioner in rebuttal has submitted that there is nothing on the record to suggest that the said money is drug money. He has reiterated that the said amount has been recovered from the house of the co-accused Shinder Singh and not from the present petitioner.

Keeping in view the above said facts and circumstances moreso, the facts which have been noticed in the order dated 05.08.2022 and that the recovery in the present case is of non-commercial quantity and bar under Section 37 of the NDPS Act would not apply and also the fact that the petitioner has joined the investigation and is not required for further investigation, the present petition is allowed and the interim order dated 05.08.2022 is made absolute

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

August 31, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>